

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1262**

---

**Introduced by Assembly Member Audra Strickland**

February 27, 2009

---

An act to amend Section 425.16 of the Code of Civil Procedure, relating to ethics.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1262, as amended, Audra Strickland. Ethics in government.

Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

The Political Reform Act of 1974, including provisions known as the Ethics in Government Act of 1990, imposes ethical standards on elected officials and candidates for elective or judicial office, including provisions governing the acceptance of gifts, honoraria, and campaign contributions. Existing law authorizes a person to sue for injunctive relief to enjoin violations of, or to compel compliance with, these provisions.

This bill would provide that the special motion to strike described above shall not apply to a cause of action brought by a private citizen *or business entity* pursuant to the provision authorizing a person to sue for injunctive relief to enjoin violations of, or to compel compliance

with, the provisions imposing ethical standards on elected officials and candidates for elective or judicial office.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 425.16 of the Code of Civil Procedure  
2 is amended to read:

3 425.16. (a) The Legislature finds and declares that there has  
4 been a disturbing increase in lawsuits brought primarily to chill  
5 the valid exercise of the constitutional rights of freedom of speech  
6 and petition for the redress of grievances. The Legislature finds  
7 and declares that it is in the public interest to encourage continued  
8 participation in matters of public significance, and that this  
9 participation should not be chilled through abuse of the judicial  
10 process. To this end, this section shall be construed broadly.

11 (b) (1) A cause of action against a person arising from any act  
12 of that person in furtherance of the person's right of petition or  
13 free speech under the United States or California Constitution in  
14 connection with a public issue shall be subject to a special motion  
15 to strike, unless the court determines that the plaintiff has  
16 established that there is a probability that the plaintiff will prevail  
17 on the claim.

18 (2) In making its determination, the court shall consider the  
19 pleadings, and supporting and opposing affidavits stating the facts  
20 upon which the liability or defense is based.

21 (3) If the court determines that the plaintiff has established a  
22 probability that he or she will prevail on the claim, neither that  
23 determination nor the fact of that determination shall be admissible  
24 in evidence at any later stage of the case, or in any subsequent  
25 action, and no burden of proof or degree of proof otherwise  
26 applicable shall be affected by that determination in any later stage  
27 of the case or in any subsequent proceeding.

28 (c) In any action subject to subdivision (b), a prevailing  
29 defendant on a special motion to strike shall be entitled to recover  
30 his or her attorney's fees and costs. If the court finds that a special  
31 motion to strike is frivolous or is solely intended to cause  
32 unnecessary delay, the court shall award costs and reasonable

1 attorney's fees to a plaintiff prevailing on the motion, pursuant to  
2 Section 128.5.

3 (d) This section shall not apply to either of the following:

4 (1) Any enforcement action brought in the name of the people  
5 of the State of California by the Attorney General, district attorney,  
6 or city attorney, acting as a public prosecutor.

7 (2) A cause of action brought by a private citizen *or business*  
8 *entity* pursuant to subdivision (a) of Section 91003 of the  
9 Government Code.

10 (e) As used in this section, "act in furtherance of a person's right  
11 of petition or free speech under the United States or California  
12 Constitution in connection with a public issue" includes: (1) any  
13 written or oral statement or writing made before a legislative,  
14 executive, or judicial proceeding, or any other official proceeding  
15 authorized by law; (2) any written or oral statement or writing  
16 made in connection with an issue under consideration or review  
17 by a legislative, executive, or judicial body, or any other official  
18 proceeding authorized by law; (3) any written or oral statement or  
19 writing made in a place open to the public or a public forum in  
20 connection with an issue of public interest; (4) any other conduct  
21 in furtherance of the exercise of the constitutional right of petition  
22 or the constitutional right of free speech in connection with a public  
23 issue or an issue of public interest.

24 (f) The special motion may be filed within 60 days of the service  
25 of the complaint or, in the court's discretion, at any later time upon  
26 terms it deems proper. The motion shall be scheduled by the clerk  
27 of the court for a hearing not more than 30 days after the service  
28 of the motion unless the docket conditions of the court require a  
29 later hearing.

30 (g) All discovery proceedings in the action shall be stayed upon  
31 the filing of a notice of motion made pursuant to this section. The  
32 stay of discovery shall remain in effect until notice of entry of the  
33 order ruling on the motion. The court, on noticed motion and for  
34 good cause shown, may order that specified discovery be conducted  
35 notwithstanding this subdivision.

36 (h) For purposes of this section, "complaint" includes  
37 "cross-complaint" and "petition," "plaintiff" includes  
38 "cross-complainant" and "petitioner," and "defendant" includes  
39 "cross-defendant" and "respondent."

1 (i) An order granting or denying a special motion to strike shall  
2 be appealable under Section 904.1.

3 (j) (1) Any party who files a special motion to strike pursuant  
4 to this section, and any party who files an opposition to a special  
5 motion to strike, shall, promptly upon so filing, transmit to the  
6 Judicial Council, by e-mail or facsimile, a copy of the endorsed,  
7 filed caption page of the motion or opposition, a copy of any related  
8 notice of appeal or petition for a writ, and a conformed copy of  
9 any order issued pursuant to this section, including any order  
10 granting or denying a special motion to strike, discovery, or fees.

11 (2) The Judicial Council shall maintain a public record of  
12 information transmitted pursuant to this subdivision for at least  
13 three years, and may store the information on microfilm or other  
14 appropriate electronic media.